This Recommended Order and Decision was followed by an Order and Decision in the 2nd Quarter of 2004.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
LUISA TAPIA, BARBARA SKILES and ROSE WEBER,	)	CHARGE NOS: 2000CF0871
	)	2000CF1362
	)	2000CF0872
Complainants,	)	2000SF0621
	)	EEOC NOS: 21B993205
and	)	21BA00659
	)	21B993206
GENLYTE THOMAS GROUP,	)	21BA01984
	)	ALS NO: S-11357
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes before me on a motion by Respondent, Genlyte Thomas Group, L.L.C., for summary decision in this consolidated case. Complainants have filed a response, and Respondent has filed a reply. Accordingly, this matter is ripe for consideration.

Contentions of the Parties

Respondent submits that Complainants cannot establish a *prima facie* case of either national origin discrimination, sexual harassment and/or retaliation. Specifically, Respondent contends that any alleged instances of anti-national origin bias were too isolated to constitute an alteration of any terms or conditions of Complainant Tapia's employment. It similarly maintains that the allegations of sexual harassment made by Complainants Skiles and Weber are either untimely, do not pertain to sexual conduct, or are too tepid to constitute a term or condition of their employment. Respondent also asserts that Complainants cannot establish a *prima facie* case of retaliation since: (1) their internal complaints of harassment did not concern protected conduct; and (2) Complainants cannot establish a causal connection between their alleged protected activity and any materially adverse employment action.

Findings of Fact

Based on the record in this matter I make the following findings of fact:

Luisa Tapia

1. On June 5, 1995, Complainant Luisa Tapia was hired as a material handler by Thomas Industries, Inc., a predecessor of Respondent Genlyte Thomas Group, L.L.C. (Genlyte).

2. From June of 1995 to May of 2000, Tapia had at least three floor supervisors, Dick Newcomb (in 1995), Vickie Dillie (from May 1997 to December 1998), and Bob Hotle (from December 1998 to April of 2000). Also, Bob Allmandinger served as the plant's manufacturing manager from February 1996 to November 1999. As the plant's manufacturing manager, Allmandinger spent approximately eighty per cent of his time on the shop floor, viewing production and talking with the employees.

3. Throughout her employment at Genlyte, Tapia was a member of the union that was subject to a collective bargaining agreement containing an anti-discrimination clause. Genlyte also maintained an anti-discrimination policy as well as an anti-retaliation policy that provided that no employee would be subject to retaliation for making a good faith complaint of harassment. In September of 1998, the anti-discrimination policy was revised to require employees to fill out a claim of harassment form. In June of 1999, Genlyte further required that complaints of harassment be processed through the grievance procedures set forth in the collective bargaining agreement.

4. At some point between February 22, 1999 and August 30, 1999, Linda Prescott, a co-worker of Tapia, made the statement "Here comes another lazy, fuckin' Mexican". At the time the statement was made, Tapia was approaching Prescott from her behind, and there was no evidence that Prescott knew that Tapia was in the area. Tapia reported the incident to Allmandinger who verbally reprimanded Prescott regarding the

use of derogatory language. Tapia never experienced a reoccurrence of Prescott's slur against Mexicans.

5. At some point in time in 1998 or 1999, Allmandinger made the observation that all of the work scheduled for Tapia's AS-1 assembly line should have been completed because he had all of the minorities working on that line.

6. At some point during Tapia's employment with Respondent, Tapia attended a union meeting to discuss a feud that had taken place that day between workers. During the meeting, Theresa Kincaid, a co-worker, made the statement that she did not realize that she had to be Hispanic to work on the AS-1 assembly line. Lonnie Stephensen, the union representative, corrected Kincaid by stating that the meeting was not about who was or was not Hispanic.

7. At some point during Tapia's employment with Respondent, unspecified employees complained about the fact that Tapia and others were speaking Spanish among themselves. No one from management told Tapia that she could not speak Spanish to her co-workers.

8. On March 4, 1999, Tapia, along with co-workers Rose Weber and Rose Pizano, submitted a written "claim of harassment" form in response to Allmandinger constantly watching them on the AS-1 reflector line. On the form Tapia had checked "sex", "race" and "other" as to nature of her claim, and requested that Allmandinger "back off" and acknowledge that the work was being done.

9. On March 8, 1999, Gordon Chizek, the plant manager, and others held a meeting with Tapia and her co-workers about their March 4, 1999 harassment complaint. During the meeting, Chizek discovered that: (1) the women were upset because on one particular day, Allmandinger had questioned whether they were doing their jobs; (2) Weber asked Allmandinger why he was watching them; and (3) Allmandinger, who watched the three women for about five minutes, responded that he would watch the three

women if he wanted to. Tapia also told Chizek about an alleged incident in which she and others witnessed a female co-worker going up to Allmandinger's office where the lights were turned off. Tapia did not have any personal knowledge about what happened in Allmandinger's office, and she and the rest of the group laughed and speculated about what Allmandinger was doing.

10. On April 16, 1999, Tapia attended a meeting with management concerning the March 4, 1999 written complaint of harassment. During the meeting Chizek informed Tapia that the company held a harassment training session for all managers on April 15, 1999, and that management agreed that Allmandinger should communicate through his supervisors. Tapia further complained that Hotle was improperly rotating people on the assembly line, and that Hotle was picking his nose and pulling his pants out of his butt. Management did not directly address Tapia's claims against Hotle at this meeting.

11. On August 30, 1999, Tapia filed a Charge of Discrimination alleging that she was the victim of national origin discrimination due to comments made about Mexicans by her co-workers, and that she was the victim of unlawful retaliation for making a complaint of sexual harassment in March of 1999 where management followed her around work, called her a troublemaker and threatened her with discharge.

12. On February 22, 2000, the day after Tapia had participated in a fact-finding conference with respect to her first Charge of Discrimination, Tapia gave Chizek a note that read "Watch Your Back" which she and Weber had found on a clipboard containing the production list for Tapia's assembly line. Management did not discover the author of the note, which had also been placed near the workstation of Roy Bunch who had not previously filed any complaints of harassment or charges of discrimination. Chizek thereafter issued a memorandum on February 23, 2000 to all employees reaffirming Respondent's policy against retaliation for making claims of harassment.

13. On February 25, 2000, Tapia informed Chizek that another "Watch Your Back" sign had been found in the women's restroom, and Chizek subsequently learned that a similar sign had been attached to a male employee's computer.

14. At some point prior to March 15, 2000, certain unspecified workers came over to Complainant's work site and repeatedly called Tapia a "bitch" and made comments that it was her fault that the plant was going to close.

15. Prior to the first shift on March 17, 2000, Robin Sanders, a male co-worker, discovered on Tapia's AS-1 line and on the AS-5 assembly line dead sardines in some sort of sauce. The fish and sauce were cleaned up prior to the arrival of Tapia or other employees on either the AS-1 or AS-5 lines.

16. At some point between February 18, 2000 and March 24, 2000, a screensaver which read "Are You Happy Now" was placed on a supervisor's computer located in the plant's production area. Chizek could not determine the author of the screensaver.

17. On March 15, 2000, Respondent announced that it was undergoing a reconfiguration of the plant that would result in the lay-off of the majority of employees and supervisors.

18. On March 21, 2000, in response to, among other things, the dead sardines' incident, Chizek issued a memorandum directing employees to treat each other with respect and warning that evidence of harassment or retaliation would result in disciplinary action. Chizek issued another memorandum on March 22, 2000, asking all employees to proceed to their vehicles after clocking out.

19. On May 3, 2000, Tapia filed a second Charge of Discrimination alleging that her co-workers and supervisors retaliated against her because of her participation in the February 2000 fact-finding conference.

Barbara Skiles

20. On September 21, 1998, Respondent hired Complainant, Barbara Skiles, in an assembly line position.

21. On February 19, 1999, Skiles filed an internal complaint of harassment. against a female co-worker (Chris Spears) who had accused her of fabricating allegations against a male co-worker (Barry Harper) whom Skiles believed had not properly clocked out when he took breaks. The accusations that Skiles made against Harper occurred after Harper had complained that Skiles was not wearing safety glasses. Skiles checked the "other" box on the harassment form when asked to identify the nature of the harassment against her and left the "sex" box blank.

22. On February 22, 1999, Chizek issued a suggested response indicating that all personal differences had to go through the employees' supervisor, that Skiles and Spears had to discuss only work matters while they were assigned to work together, and that safety issues could be discussed at any time. Skiles signed the form indicating that she had accepted the proposed resolution.

23. On a daily basis between June 17, 1999 and December 17, 1999, two male supervisors (Allmandinger and Jesse Lockhart) pulled certain male and female workers off the assembly line to purchase soft drinks for the supervisors. The women never complained to Skiles that they were sexually offended or were sexually degraded by having to purchase soft drinks for the supervisors.

24. At some point after Skiles had filed her February 19, 1999 internal complaint of harassment, Skiles encountered a supervisor and three co-workers (Vickie Dillie, Chris Spears, Tammy Wallen and Cathy Leanhart) staring and laughing at her while she performed her job. During one incident, Dillie, a supervisor, followed Skiles around to see if she was wearing her safety glasses. During another incident, Wallen and Spears taunted Skiles by stating "watch out what you say, she [Skiles] might run to the office."

25. On March 15, 2000, Skiles resigned her position with Respondent and accepted another position with another employer.

26. On May 16, 2001, an Order was entered which sanctioned Skiles $2,061.39 due to her failure to attend a scheduled deposition. The sanctions arose out of the extra time and costs incurred by out-of-state counsel for Respondent to make a second trip to Illinois to take Skiles' deposition.

Rose Weber

27. On August 25, 1992 Respondent hired Rose Weber as a production worker at its Milan, Illinois facility.

28. At some point in 1996, Weber witnessed on a few occasions a male co-worker (Jimmy Ogle) stand behind female workers and pretend that he was humping them.

29. Beginning in 1998, Weber usually worked on the reflector line in the AS-1 area of the plant with Luisa Tapia and Rosa Pizano. While Weber worked on the reflector line until April 7, 2000, Bob Hotle and Dennis Frenell served as her direct supervisors, and both supervisors reported to Bob Allmandinger. On occasion, Dillie served as a supervisor during this time.

30. On March 4, 1999, Weber, Tapia and Pizano submitted a "claim of harassment form" that accused Allmandinger of watching them too closely while working on the reflector line. In the "Nature of Claim" section of the form, the women checked "sex", "race" and "other".

31. During their investigation of the March 4, 1999 harassment complaint, management learned that Allmandinger was observing the three women because he initially believed that they were not working, and that once he discovered that the three women were working on towers for fixtures, he began to walk away.

32. On March 16, 1999, Patty Kephart, a co-worker of Weber's on second shift told Allmandinger that Weber, Tapia and others on the reflector line were on a slowdown. The record is silent as to whether Kephart was aware of Weber's filing of the March 4, 1999 harassment complaint.

33. At some point between February 22, 1999 and August 30, 1999, Weber witnessed an incident in which a female co-worker went into Allmandinger's office and stayed with him for 30 minutes with the lights off. Weber did not witness anything that occurred in Allmandinger's office and did not hear either Allmandinger or the female co-worker provide any details about the incident.

34. From time to time between February 22, 1999 and August 30, 1999, Weber witnessed Hotle place his hand down the front of his pants and appear to adjust his penis. Hotle, who also performed this act in front of male co-workers, did not expose his penis to any of his co-workers during these incidents.

35. On August 30, 1999, Weber filed an unperfected Charge of Discrimination alleging that she was the victim of sexual harassment and retaliation.

36. On October 11, 1999, Barbara Kernan, a co-worker of Weber's, grabbed Weber because Kernan was upset about having to work on the reflector line. Weber told Kernan never to touch her again and complained to Haack about the incident. During the investigation of Weber's complaint, Haack sided with Kernan, blamed Weber for the incident and threatened her with discharge.

37. On November 11, 1999, Weber perfected her Charge of Discrimination. As part of her retaliation claim, Weber asserted that she made a claim of sexual harassment to management in March of 1999, and management retaliated against her by following her around the workplace, calling her a troublemaker, and threatening her with discharge.

38. On April 7, 2000, Weber resigned her position with Respondent after Respondent had announced its intention to undergo an extensive layoff at the plant for May of 2000.

Conclusions of Law

1. Complainants Tapia, Skiles and Weber are "employees" as that term is defined under the Human Rights Act.

2. Respondent is an "employer" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Complainants Skiles and Weber failed to establish a *prima facie* case of sexual harassment in that Complainants failed to present sufficient evidence to create a triable question as to whether the alleged conduct of Complainants' supervisors and co-workers, even if true, rose to the level of actionable harassment.

4. Complainant Tapia failed to establish a *prima facie* case of national origin discrimination.

5. Complainants Tapia, Skiles and Weber failed to establish a *prima facie* case of retaliation.

Discussion

As with all motions for summary decision pending before the Commission, a motion for summary decision shall be granted if the record indicates that there is no genuine issue of material fact, and the moving party is entitled to a recommended order as a matter of law. (See, section 8-106.1 of the Human Rights Act (775 ILCS 5/8-106.1) and **Bolias and Millard Maintenance Service Company**, 41 Ill. HRC Rep. 3 (1988).) Moreover, in analyzing motions for summary decision, the Commission is required to scrutinize the pleadings, affidavits and exhibits presented to it and to strictly construe them against the party seeking the summary decision so as to leave no doubt but that summary decision is proper. (See, **Fourdyce v. Bay View Fish Co.**, 111 Ill.App.3d 76,

443 N.E.2d 790, 792, 66 Ill.Dec. 864, 866 (3rd Dist., 1982).) Furthermore, although there is no requirement that a complainant establish her own case to overcome the motion, a complainant is still required to present some factual basis that would arguably entitle her to a judgment under the applicable law.

Luisa Tapia

According to her Complaint, Tapia alleged that from February 22, 1999 to August 30, 1999, her co-workers called her a "dirty, filthy Mexican" and "lazy Mexican." In her deposition, though, Tapia limits the number of incidents of offensive behavior to a comment made by co-worker Prescott (i.e., "dirty, filthy Mexican"), an undated complaint by co-workers about Complainant speaking Spanish to others in the workplace, a comment made by co-worker Teresa Kincaid, who stated during a meeting that she "did not know [that] she had to be Hispanic to work on AS-1 line," as well as a statement by Allmandinger that all of the work should have been completed because he "had all of the minorities working on the assembly line". However, as noted by Respondent, in order to prove national origin harassment, a complainant must establish that she was harassed on the basis of her national origin and that the harassment was so severe or pervasive that it altered the conditions of her employment and created an abusive environment. See, for example, **Hu and Allstate Insurance Co.**, ___ Ill. HRC Rep. ___ (1992CF0040, June 16, 1995).

Of the incidents mentioned by Tapia only the comments made by Prescott and Kincaid arguably demonstrate evidence of anti-Hispanic animosity. However, these two comments, which were not directed at Tapia and made by co-workers, hardly establish that the workplace was permeated with anti-Hispanic animosity. (See, **Hill and Peabody Coal Co.**, ___ Ill HRC Rep. ___ (1991SF0123, June 26, 1996), where the Commission similarly concluded that infrequent slurs are not enough to establish harassment.) Indeed, when management discovered that Prescott had made the anti-Hispanic remark,

Allmandinger reprimanded Prescott regarding the use of derogatory remarks in the workplace, and Tapia never witnessed a reoccurrence of such misconduct from her.

To be sure, Allmandinger made a 1998 or 1999 comment about minorities working on Tapia's assembly line which I have taken as true for the purpose of this motion. However, neither this comment nor Tapia's accusation that Allmandinger pushed her assembly line more than other assembly lines can be considered as evidence of anti-Hispanic animosity since: (1) Tapia failed to show that all members of the AS-1 line were Hispanics or members of other minority groups; (2) Tapia provided no evidence of Allmandinger's leniency as to other assembly lines; (3) Allmandinger's job required that workers under his supervision be productive. Thus, when considering the sporadic nature of the comments either individually or collectively, I find that Tapia has not set forth sufficient evidence to raise a genuine issue with respect to her national origin harassment claim. Indeed, Tapia did not bother to even discuss her national origin claim in the argument portion of her response to the pending motion for summary decision. As such, and for all of the above reasons, I will grant the portion of the motion seeking dismissal of the national origin claim.

As to her first retaliation claim, Tapia alleged that: (1) she complained of sexual harassment in March of 1999; and (2) as a result of her complaint, Respondent harassed her by calling her a troublemaker, following her around at work, and threatening her with discharge. In her second retaliation claim, Tapia asserted that after she attended a February 18, 2000 fact finding conference in relation to her Charge of Discrimination at issue in her first retaliation claim: (1) someone placed a note stating "watch your back" on her clipboard; (2) her co-workers repeatedly called her a "bitch"; (3) someone placed dead fish on her work station; (4) someone placed a screen saver stating "are you happy now?" on the computer screen of her supervisor; and (5) certain supervisors stated that Respondent was reducing its employees due to Tapia's pending discrimination claim

against Respondent. However, after examining the record as to each claim, I find that Tapia failed to present evidence establishing even a *prima facie* case of retaliation.

Generally, when establishing a *prima facie* case of retaliation, a complainant needs to show that: (1) she has engaged in a protected activity that was known by the alleged retaliator; (2) respondent subsequently took some action against her; and (3) a causal connection exits between the protected activity and the adverse act. (See, for example, **Westfield and Illinois Department of Labor**, 40 Ill. HRC Rep. 395 (1988).) According to her Complaint, Tapia focuses on the March 4, 1999 harassment claim against Allmandinger that concerned Tapia's assertion that Allmandinger had been constantly watching her and other females doing their jobs while working on the assembly line. While Respondent submits that the March 4, 1999 harassment complaint could not qualify as a protected activity under the Human Rights Act, the allegations that Allmandinger constantly watched Tapia could form the basis of a sexual harassment claim if the record contained other evidence regarding the motivation for Allmandinger's actions. Moreover, although Complainant did not produce any evidence to question Allmandinger's innocent motive for watching her on the assembly line, the Commission has never required that a complainant prove the merits of the protected activity in order to establish a *prima facie* case of retaliation.

Respondent fares better, though, in its contention that Tapia cannot show for either of her retaliation claims that she experienced an adverse employment action as a result of her protected activity. In **Campion and Blue Cross and Blue Shield Asso.**, ___ Ill. HRC Rep. ___ (1988CF0062, June 27, 1997), the Commission, in the context of a retaliation claim, observed that the Human Rights Act does not protect individuals against every adverse thought, procedure or action and required that in order for the adverse act to be actionable, it at least had to be sufficiently severe or pervasive to constitute a term or condition of employment. **Campion**, slip op. at p. 9.

In applying these standards, I find that the three instances of retaliation cited by Tapia in her first Complaint (i.e., the comment by Hotle that she was a troublemaker, the alleged excessive supervision by supervisors, and the alleged threat with discharge) do not constitute adverse acts that qualify for protection under the Human Rights Act. Specifically, these incidents do not concern a significant change in Tapia's employment status such as hiring, firing, failing to promote, demotion or a decision causing a significant change in benefits. Moreover, while at least the Seventh Circuit recognizes that material adverse acts need not be strictly tied to financial consequences experienced by the employee (see **Collins v. State of Illinois**, 830 F.2d 692 (1987)), Tapia can point to no aspect of the terms or conditions of her work that was altered as a result of the alleged conduct.

Indeed, a review of the record indicates that Tapia never actually heard Hotle tell her that she was a troublemaker, and that she became aware of the remark second-hand through a co-worker who merely assumed that Hotle was referring to Tapia. Additionally, Tapia failed to provide any evidence regarding a threat of discharge for the period of March through August of 1999, and mentions, in addition to Allmandinger's March 1999 incident, only one other instance of a supervisor watching her and other employees while standing at the water cooler. These perceived slights, though, are too insignificant to establish a case of unlawful retaliation, especially where Tapia cites to no instance where she was unable to perform her job, or where the cited conduct made it more difficult to perform her job. Thus, because Tapia has not set forth any factual basis to show that her work environment was altered by the cited instances of retaliation, I will grant the motion as to Tapia's first claim of retaliation.

Tapia's second claim of retaliation concerns various incidents (i.e., the "watch your back" note, the "bitch" comments by Tapia's co-workers, the dead fish in Tapia's work area, the "are you happy?" screensaver, and supervisors' comments that Respondent was

reducing its employees due to Tapia discrimination claim) that occurred after she participated in a fact-finding conference on February 18, 2000. The problem with the first four of these allegations is that there is nothing in the record to show that the people responsible for these instances were aware of Tapia's presence at a fact-finding conference. Indeed, the required causal linkage is missing as to the dead fish and "watch your back" sign incidents since others who had not filed discrimination claims also experienced this conduct. The fifth incident concerning in which Tapia alleges that her supervisors linked Respondent's reduction of its Milan plant with her lawsuit is also unavailing because Tapia concedes in her deposition that she did not hear the comments herself and that there was no direct reference in the comments to the reduction of the plant and her participation at the February 2000 fact-finding conference. Tapia Dep. at p. 35.

The "bitch" comments allegedly made by Tapia's co-workers, though, provide a greater potential for a substantive retaliation claim since, although there is nothing in the record to show that these co-workers actually knew about Tapia's participation at the February 18, 2000 fact-finding conference, the comments made an indirect reference to her discrimination claim. However, when pressed at her deposition, Tapia was unable to put a concrete time period as to when the comments occurred, although she believed that they occurred before the March 15, 2000 announcement that the plant was going to be significantly shut-down. (Tapia's dep. at p. 36.) Thus, in order to meet the causality element of her retaliation claim the comments had to have occurred between the February 18, 2000 fact-finding conference and the March 15, 2000 announcement regarding the plant reduction. Unfortunately for Tapia, there is nothing in her deposition testimony that places these comments within this time period, or otherwise links her participation at the fact-finding conference with the shutdown of the plant. Indeed, if anything Tapia's deposition testimony appears to link the "bitch" comments to the filing of her Charge of

Discrimination in May of 1999, which is an event different from the predicate acts (i.e., the March 1999 complaint about Allmandinger or her participation in the February 18, 2000 fact-finding conference) that formed the substance of either retaliation claim.

Alternatively, even if Tapia could establish that the comments were made during this time frame, she still faces similar problems with respect to providing evidence that the four-week period of comments constituted a material alteration of the terms and conditions of her work environment. Specifically, Tapia provided no evidence regarding how these comments affected her work production, and the record shows that Respondent issued memorandums on February 22, 2000 and March 21, 2000, reminding the employees to refrain from retaliating against other employees and explaining that the decision to shut-down the plant was solely an economic decision. Additionally, Tapia has not suggested any other reasonable alternative measures that Respondent could have taken to curb the conduct of her co-workers. Indeed, employers need only take reasonable measures to correct future retaliatory conduct in the workplace in order to satisfy its duty to the complaining employee. (See, **Shaw v. Autozone**, 180 F.3d 806 (7th Cir. 1999).) Thus, it is enough to say that Tapia loses on this aspect of Respondent's motion for summary decision because she failed to provide any evidence of either a causal linkage between the alleged protected conduct and the adverse act or a material alteration of the terms and conditions of her work environment. Accordingly, the motion for summary decision will be granted as to Tapia's second claim of retaliation as well.

Barbara Skiles

According to her Complaint, Skiles asserts that she endured harassment "because of her gender" for a period from June 20, 1999 to December 19, 1999 when her supervisors: (1) pulled her and other workers away from their jobs on the assembly line to purchase soft drinks; (2) required that she wear safety glasses; and (3) threw a certificate at her. While the allegations of the Complaint are somewhat ambiguous as to whether

Skiles is seeking a recovery under a sexual harassment or a sexual discrimination theory, the text of the Complaint alleges that this conduct constitutes an actionable claim under the sexual harassment provisions of section 2-102(D) of the Human Rights Act. However, after carefully reviewing the record in this matter, I agree with Respondent that Skiles has not created a material fact sufficient to defeat its request for a summary decision whether the Complaint is viewed either as a claim for sexual harassment or sex discrimination.

Under section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D)), sexual harassment is defined as "any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when…(3) such conduct has the purpose and effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." The Commission has declared that there is no "bright line" test for determining what behavior will lead to liability under a sexual harassment theory and has charged the administrative law judge to assess not only what was done, but how it was done in relationship to the total working environment. (See, **Robinson v. Jewel Food Stores**, 29 Ill. HRC Rep. 198, 204 (1986).) Ultimately, however, the threshold issue in any sexual harassment case is whether the instances of harassment alleged by the complainant rise to a level of hostility so as to be considered actionable conduct. (See, **Scott v. Sears, Roebuck & Co.**, 798 F.2d 210 (7th Cir. 1986).) According to the United State Supreme Court in **Harris v. Forklift Sys., Inc.**, 114 S.Ct. 367, 370 (1993), a cause of action for sexual harassment arises, at least in a Title VII context, "when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."

Thus, if Skiles' Complaint is viewed as a traditional sexual harassment claim under section 2-102(D), it is clear that Skiles' alleged acts of sexual harassment, i.e., the purchase of soft drinks for Skiles' supervisors by other female co-workers, management's

insistence that Skiles wear safety glasses, and an incident when a female human resource manager threw a certificate at her, do not amount to actionable sexual harassment since Skiles has not provided any evidence that the alleged conduct was sexually demeaning in nature, and the alleged conduct does not concern either a sexual advance or a request for sexual favors. Indeed, as Respondent points out, Skiles indicated in her deposition that she too wished that she had been called away to purchase soft drinks for her supervisor, and the record otherwise does not disclose how the safety glasses or certificate incidents concerned conduct of a sexual nature.

Additionally, while the Commission in **Ford and Caterpillar Inc.**, ___ Ill. HRC Rep. ___ (1993SF0242, October 28, 1996) recognized the potential for a "harassment based on sex" claim where, as here, the conduct itself was insufficient to establish a sexual harassment claim, a complainant must still show under such a theory that the employer was exposing members of one sex to offensive conduct while not exposing members of the opposite sex to similar conduct. Here, Skiles loses on such a claim since: (1) management prevailed on both males and female workers to purchase them soft drinks; (2) management required that both males and females wear safety glasses; and (3) a one–time act of rudeness by the human resources manager in throwing a certificate is too tepid to support a harassment claim. (See, **Hill**, *supra*.) Therefore, I will grant this aspect of Respondent's motion as it relates to the portion of the Complaint asserting sexual harassment/sex discrimination.

As to her retaliation claim, Skiles asserted in her Complaint that after she had complained of sexual harassment to management in February of 1999, Respondent retaliated by following her around at work and threatening her with discharge. Skiles similarly asserted in her deposition that in December of 1999 the retaliation came in the form of: (1) a member of management not speaking nicely to her; (2) co-workers dumping trash in her work area; (3) a co-worker falsely accusing her of stealing a glove; (4) a

supervisor telling her to clean up her work station; and (5) co-workers hiding her chair. Yet for reasons similar to those set forth in the discussion of the **Tapia** case above, Complainant has not created a material fact sufficient to defeat Respondent's request for summary decision as to her retaliation claim.

Initially, I doubt whether Skiles can demonstrate in her retaliation claim that she engaged in any protected activity based on the February 19, 1999 harassment complaint she lodged against a female co-worker Chris Spears. Specifically, while Skiles submits that the February 19, 1999 complaint constituted a protest of sexual harassment, the record shows only that Complainant objected to the manner in which Spears spoke to her and accused her of fabricating allegations concerning a male co-worker's failure to punch out on the time clock. These allegations, though, do not pertain to issues of sexual harassment or, for that matter conduct of a sexual nature committed by a co-worker. Indeed, the record indicates that management promptly investigated Skiles' complaint and resolved the matter by February 22, 1999. Thus, in the absence of any protest by Skiles relating to sexual conduct, I agree with Respondent that Skiles has not provided any evidence to support her allegations that Respondent retaliated against her for lodging a complaint of sexual harassment.

Skiles' retaliation claim is deficient for other reasons as well. As noted above, the Commission decision in **Campion** requires that Complainant provide some evidence that the retaliatory acts concern a material adverse act. Here, though, Complainant's allegations of harassment do not pertain to specific terms of her employment such as a termination, demotion, decrease in salary or material alteration of job duties, but rather concern relatively trivial matters such as co-workers following her around at work, laughing at her and giving her "dirty looks." Similarly, Skiles' contention that her supervisor threatened her with termination cannot form the basis of a viable retaliation claim since she failed to provide any evidence indicating how such a threat altered a

specific term of her employment. (See, **Kersting v. Wal-Mart Stores, Inc.**, 250 F.3d 1109 (7th Cir. 2001).) The conduct Complainant experienced in the workplace in December of 1999 (i.e., the December 3, 1999 comment from Haack that she wanted to write up Skiles for not wearing her safety glasses, the December 18, 1999 incident in which co-workers threw trash near Skiles' work area, the false accusation by a co-worker that she stole work gloves that resulted in no discipline, the December 19, 1999 incident when Skiles noticed that her chair was missing, and the December 1999 order directing Skiles to clean her work area) suffers from a similar problem.

Finally, I agree with Respondent that Skiles failed to present evidence of a causal connection between her February 19, 1999 complaint of sexual harassment and her alleged acts of retaliation. Specifically, Skiles failed to place a concrete date on when management threatened her with termination or when she experienced harassment by her co-workers. Moreover, there is nothing in the record to indicate that these co-workers were even aware of her February 19, 1999 harassment complaint to make the required linkage between the Complainant's protest and any adverse act. Additionally, although Complainant supplied a concrete date for the December 1999 acts by her co-workers and supervisors, the ten-month gap between the February 19, 1999 protest and the December 1999 events is simply too great, without more, to make a causal connection. Accordingly, for all of the above reasons, Respondent's motion for summary decision as it pertains to Skiles will be granted as to both the sexual harassment and retaliation claims.

Rose Weber

Weber asserts that she was the victim of sexual harassment when, from a period between February 22, 1999 to August 30, 1999: (1) a member of management granted job benefits to female employees in return for sexual favors; (2) a member of management on several occasions put his hands inside the front of his pants and touched his penis; and (3) a co-worker stood behind female employees and made humping

motions. In analyzing whether this conduct is sufficiently hostile to establish a sexual harassment claim, the Commission has adopted factors recognized by the United States Supreme Court in **Harris v. Forklift Systems, Inc.**, 510 U.S. 17, 114 S.Ct. 367, 126 L.Ed2d 295 (1993) as non-exclusive indicators in resolving whether a work environment has been rendered hostile or abusive. (See also, **Davenport and Hennessey Forrestal Illinois, Inc.**, ___ Ill, HRC Rep. ___ (1987SF0429, March 30, 1998) and **Trayling v. Board of Fire and Police Commissioners**, 273 Ill.App.3d 1, 652 N.E.2d 386, 394, 209 Ill.Dec. 846, 854 (2nd Dist. 1995).) Included in the Court's significant factors are: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct; (3) the physically threatening or humiliating nature of the conduct, as opposed to offensive utterances; and (4) the interference that the conduct has on the employee's work performance. (**Harris**, 114 S.Ct. at 371.) However, in applying these standards and after carefully reviewing the record, I find that Weber cannot establish a *prima facie* case of sexual harassment based on these allegations.

Specifically, as to Weber's contention that a member of management granted job benefits to female employees in return for sexual favors, the record shows that Weber was able to cite only one instance where she observed a female co-worker go into her supervisor's office with the lights off and remain for approximately thirty minutes before leaving the office. In her deposition, Weber admitted to having no first hand knowledge as to what happened in the supervisor's office and conceded that the allegation with respect to the female employee receiving job benefits from this supervisor in exchange for sexual favors was only a rumor. Thus, because Weber can provide nothing more than rumor to substantiate her allegation, I agree with Respondent that I cannot consider this allegation as part of her sexual harassment claim.

Weber's allegation with respect to a co-worker standing behind female employees and making humping motions in a sexual manner suffers a similar fate, albeit for different

reasons. In her deposition, Weber identified the male co-worker doing the humping activity, but indicated that the last time she witnessed the conduct was sometime in 1996. However, because the Human Rights Act can award relief only for conduct that occurred within 180 days from the date of the filing of a charge of discrimination, the humping allegations with respect to this co-worker are time-barred since Weber filed her Charge of Discrimination on August 30, 1999. (See, **Sethaler and Owen Healthcare, Inc.**, ___ Ill. HRC Rep. ___ (1997SF0360, October 4, 1999).) Moreover, while the Commission has recognized the concept of a continuing violation to bootstrap otherwise stale allegations into an existing claim, Weber cannot use this doctrine since Weber has not presented any evidence indicating that she became aware that the humping motions constituted sexual harassment only in light of incidents that occurred some two years later within the applicable jurisdictional period. See, **Sethaler** and **Filipovic v. K & K Express Systems**, 176 F.3d 390, 396 (7th Cir. 1999).

Finally, Weber alleged that Hotle's habit of putting his hands down the front of his pants and adjusting his penis constituted sexual harassment in the workplace since: (1) he adjusted himself on several occasions during department meetings; and (2) in her view, Hotle's adjustments were "sexual", "gross", and "degrading" because they were done by a supervisor. However, in applying the standards under **Harris**, I note that while Weber asserted in her deposition that Hotle adjusted himself in front of her because she was a woman, she conceded that he did the same act in front of male co-workers, and that at no time was he attempting to masturbate when he adjusted himself. Moreover, although Weber cites an instance where Hotle asked Haack to "pick his butt", I cannot say that this conduct was sufficiently severe so as to constitute actionable harassment under either **Harris** or the Commission's decision in **Fritz and State of Illinois, Dept. of Corrections**, ___ Ill. HRC Rep. ___ (1987SF0543, October 17, 1995) since Weber conceded that Haack laughed at Hotle during this episode. Here, it is enough to say that

while Hotle's behavior in the workplace was boorish, Weber loses on her sexual harassment claim since: (1) there was no evidence that any of his conduct was specifically directed at her or other females; (2) there was no claim that Hotle requested sexual favors from her; and (3) there was no evidence that Hotle's conduct had any effect on her job performance or any other term or condition of her employment.

As to her retaliation claim, Weber alleged that she and Tapia filed a claim of "sexual" harassment on March 4, 1999 that concerned an incident in which Allmandinger watched Weber work on the assembly line, and that from March through August of 1999, management called her a troublemaker, followed her around on a regular basis and threatened her with discharge. However, for reasons cited in the analysis of **Tapia's** case, I find that these allegations under this record do not establish a *prima facie* case of retaliation. Specifically, the alleged acts of retaliation, i.e., being called a troublemaker, being following around the workplace and being threatened with discharge, in the absence of any tangible effect on the terms of Weber's employment, are too tepid to constitute material adverse actions.

In her deposition, though, Weber cites as other examples of retaliation a March, 1999 incident where a co-worker grabbed her arm because a co-worker was upset about having to work a particular job assignment, and an undated incident in which a co-worker provoked a fight in the employee parking lot. However, Weber failed to present evidence that either co-worker had been aware that she had filed the March 4, 1999 internal complaint so as to establish a *prima facie* case of actionable retaliation. Moreover, while Weber mentioned several instances of conduct occurring from October of 1999 to March of 2000 when, according to Weber, management and co-workers blamed Respondent's precarious financial situation on the existence of her lawsuit, these instances are outside the time frame of her retaliation claim that concerned conduct occurring between March and August of 1999.

Indeed, if Weber had wanted to include retaliatory conduct that occurred at a later time, she should have followed the example of her co-worker Luisa Tapia and filed a separate Charge of Discrimination. (See for example, **Taborn and Department of Employment Security**, ___ Ill. HRC Rep. ___ (1987SF0217, November 12, 1996) where the Commission similarly concluded that it could not base relief on acts that occurred subsequent to the date of the original Charge of Discrimination unless a complainant files either an amended Charge or a separate Charge of Discrimination.) This is especially true where, according to Weber, the protected conduct that generated the alleged retaliatory acts occurring after August of 1999 is not her filing of the March 4, 1999 internal grievance as alleged in her Complaint, but rather her separate act of filing a Charge of Discrimination in August of 1999. Thus, for all of the above reasons, I will grant Respondent's motion for summary decision as it pertains to Weber's claims of sexual harassment and retaliation.

Attorney Fees.

Respondent also seeks attorney fees from Barbara Skiles based on its contention that her sexual harassment and retaliation claims are frivolous. Specifically, Respondent contends that Skiles could not have reasonably believed that her February 1999 internal complaint constituted a complaint of sexual harassment where Skiles candidly testified in her deposition that the complaint stemmed from her refusal to sign a union petition, and where the Department eventually ruled that the internal complaint did not contain any allegations of sexual harassment. It similarly submits that Skiles' retaliation claim is equally frivolous since Skiles could not establish that she engaged in any protected conduct when she made her internal Complaint against a co-worker in February of 1999.

After reviewing the pleadings, I cannot agree with Respondent that Skiles' sexual harassment and retaliation claims were frivolous. While I have agreed with Respondent that Skiles failed to present evidence sufficient to create a genuine issue of material fact

with respect to her sexual harassment and retaliation claims, I note that the Department evidently believed that Skiles' sexual harassment and retaliation allegations were sufficient to satisfy the substantial evidence standards when it filed the Complaint on Skiles' behalf. Thus, it seems that Respondent's request for fees boils down to a dispute with the Department's decision to file a Complaint alleging sexual harassment and retaliation. As such, I cannot agree with Respondent that no reasonable person could have pursued a sexual harassment or retaliation claim based on these allegations so as to support this request for attorney fees. Respondent's cursory request for attorney fees with respect to Luisa Tapia's case is denied as well. I will, though, recommend that Skiles pay to Respondent $2,061.39 in attorney fees and costs, as directed in the May 16, 2001 Order due to her failure to appear at her originally scheduled deposition.

Recommendation

For all of the above reasons, it is recommended that:

1. The motion for summary decision be granted as to Complainants Tapia Skiles and Weber.

2. The Complaints and the underlying Charges of Discrimination for Luisa Tapia, Barbara Skiles and Rose Weber be dismissed with prejudice.

3. Barbara Skiles be required to pay Respondent $2,061.39 in attorney fees and costs for her failure to appear at her scheduled deposition.

HUMAN RIGHTS COMMISSION

BY:_____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 16TH DAY OF DECEMBER, 2002